

ROBERT J. SHORNEY

IBLA 84-624

Decided July 22, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer NMA-57372 (OK).

Set aside and remanded.

1. Bureau of Reclamation: Generally -- Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Stipulations

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1982), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

APPEARANCES: Robert J. Shorney, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Robert J. Shorney appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 4, 1984, rejecting oil and gas lease offer NMA-57372 (OK). The offer was filed on July 18, 1983, for acquired land in sec. 11, T. 2 S., R. 13 E., Indian Meridian, Atoka County, Oklahoma, in the McGee Creek Project, under the jurisdiction of the Bureau of Reclamation (Bureau). The decision states:

Oil and gas lease offer NMA 57372 (OK) is rejected in its entirety for the following reason:

The Bureau of Reclamation has recommended against leasing at this time on the lands contained in oil and gas lease offer NMA 57372 (OK) because of their ongoing mineral acquisition program in the McGee Creek Project, which is still in a construction status. Completion of their mineral acquisition program is estimated to be nearly two and a half years away and they will not consent to leasing until then.

In his statement of reasons, appellant asserts that the May 4, 1984, decision is arbitrary and capricious. Appellant contends that the reasons given by BLM for rejection of his application were not in fact the reasons for the denial. In support of this contention appellant submitted a copy of a letter dated June 19, 1984, from Eugene Hinds, Regional Director, Southwest Region, Bureau of Reclamation. This letter responds to an inquiry made by appellant on June 4, 1984, wherein appellant references the Bureau's recommendation to deny his lease offer and requests that he be advised "what construction is contemplated on any of the land in this application and the status of such construction." Further, appellant inquired of the Bureau how issuing the lease would be detrimental to its mineral acquisition program. The Bureau's response states in part:

This is in response to your letter of June 4, 1984, concerning an oil and gas lease on our McGee Creek Project, Oklahoma, which we recommended be denied.

Our denial was not necessarily based on having construction specifically planned for the proposed lease area nor on leasing the area being detrimental to our mineral acquisition program. It was based on our policy to allow the local project managing entities as much time as possible to finalize their development and management plans for the project. This, in turn, enables us to develop a comprehensive minerals management plan in coordination with these managing entities, and we can then proceed with leasing the minerals.

Appellant's offer to lease was rejected by BLM solely on the basis of a memorandum from the Acting Regional Director, Bureau of Reclamation, Southwest Region, to the Chief, Mineral Leasing Unit II, BLM, dated April 26, 1984, wherein the Bureau expressed its position that it would like to refrain from leasing lands in the McGee Creek Project until October 1, 1986, when mineral acquisition is expected to be completed.

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), states in pertinent part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

The effect of this statute is to preclude mineral leasing on acquired lands of the United States without consent of the administrative agency having jurisdiction over the acquired land. Altex Oil Corp., 66 IBLA 307 (1982); Dennis Harris, 55 IBLA 280 (1981); Arthur E. Meinhart, 46 IBLA 27 (1980); Capitol Oil Corp., 33 IBLA 392 (1978). However, if the lands embraced by an oil and gas lease offer are under the surface jurisdiction of a service or bureau within the Department of the Interior, such as the

Bureau of Reclamation, the consent of the Secretary of the Interior is necessary under the Act for leasing of the land. Mardam Exploration, Inc., 52 IBLA 296 (1981); Walter W. Sapp, 29 IBLA 319 (1977). Thus, the opinion of the Bureau or service within the Department would not be controlling in this case, although its views would be considered carefully. Where a bureau or service within the Department objects to leasing land under its jurisdiction, BLM has responsibility for assembling information and determining on behalf of the Department whether a lease should issue. Esdra K. Hartley, 35 IBLA 137 (1978).

No such determination was made by BLM in this case. The BLM decision rejecting appellant's oil and gas lease offer did not set forth any reasons except the Bureau's objections. Apparently, BLM considered the Bureau's recommendations to be binding. In doing so, BLM failed to make an independent determination providing background data and facts to support its conclusion on behalf of the Department that rejection of appellant's lease offer was warranted. See Esdra K. Hartley, *supra* at 138. Therefore, the BLM decision must be set aside and the case remanded to allow BLM to make an independent determination of whether leasing in the McGee Creek Project should be withheld as recommended by the Bureau of Reclamation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further consideration consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge

